



**COMMONWEALTH OF VIRGINIA
SEALED INVITATION FOR BIDS (IFB)
IFB#: E 194-2280MLC**

Issue date: January 10, 2012

Title: Grounds Maintenance Equipment

Due Date: February 1, 2012 by 1:00 PM (EST)

Commodity Code(s): 02000, 51500, 54500, & 76000

Issuing Agency: Department of General Services
Division of Purchases and Supply

Contract Period: Upon Award thru March 1, 2014 (with three one-year renewal options)

If Bids are mailed, send directly to the Issuing Agency shown above. If Bids are hand delivered (or delivered by courier or messenger service), deliver to the Department of General Services, Division of Purchases. Reference Complete details in Section IX, entitled Bid Submission for Sealed "Invitation for Bid".

Sealed Bids will be received until **Wednesday, February 1, 2012 by 1:00 pm** for providing the goods described herein. The public bid opening will be held at 9:00 AM on **Thursday, February 2, 2012 @ 9:00 AM.**

All Sealed Bid Responses for this solicitation must be submitted in paper format using the forms provided herein. Due to the complexity of this solicitation, electronic bid will not be accepted.

IDENTIFICATION OF BID ENVELOPE: The signed Bid should be returned in a separate envelope or package, sealed and identified as instructed in Section XI, paragraph S. The envelope/package should be addressed as directed in Section IX, entitled Bid Submission for Sealed "Invitation for Bid". No other correspondence or other Bids should be placed in the envelope.

All inquiries for information regarding this Request for Bid should be directed to: Mary Hicks-Coston, Buyer Manager II, (804) 786-4068 or at mary.coston@dgs.virginia.gov from **January 10, 2012 thru January 23, 2012.**

In compliance with this Invitation for Bids and to all the conditions imposed therein, and hereby incorporated by reference, the Undersigned offers and agrees to furnish the services in accordance with the signed Bid or as mutually agreed upon by subsequent negotiations.

Name and Address of Firm:

Date: _____

By: _____

Signature

Typed or Printed Name and Title

Email: _____

eVA Vendor ID or DUNS number.: _____

Note: This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against a bidder because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

RETURN OF THIS PAGE IS REQUIRED

GROUNDS MAINTENANCE EQUIPMENT INDEX

I.	Purpose	Page 3
II.	Background	Page 3
III.	Scope of Work	Page 4
IV.	Bidder Requirements	Page 4
V.	Contract Participation	Page 6
VI.	Contract Documents and Order of Precedence	Page 6
VII.	Lead Office Contact Information	Page 7
VIII.	Equipment Replacement & Obsolete Items	Page 7
IX.	Bidders Submission	Page 7
X.	General Terms and Conditions	Page 9
XI.	Special Terms and Conditions	Page 16
	Attachments	
	A. Pricing Schedule & Specifications	
	B. Bid Tab Spreadsheet A1	
	C. Small Business Sub-Contracting	
	D. Vendor Data Form	
	E. SCC Corporation Form	
	F. National Association of State Procurement Officials (NASPO) Suggested Terms and Conditions	

I. PURPOSE:

The intent and purpose of this Invitation for Bid (IFB) is to solicit sealed Bids Responses to provide ground maintenance equipment from the original equipment manufacturers (OEM) that can provide the specified equipment on a brand name or equivalent basis through their designated or authorized distribution network to the Commonwealth of Virginia and to the National Association of State Procurement Officials (NASPO). The resulting contracts may be accessed by other NASPO states with the approval of the individual state procurement directors.

The Commonwealth of Virginia, Department of General Services, Division of Purchases and Supply (DPS), is issuing this solicitation as the lead entity and on behalf of NASPO. For the purposes of this solicitation, NASPO may also be referred to as "agency" or "the Commonwealth".

II. BACKGROUND:

- A. **MISSION:** The mission of the Commonwealth of Virginia and NASPO is to implement multi-state Contracts to achieve cost-effective and efficient acquisition of quality equipment. Contracts resulting from this solicitation may be used by any of the NASPO State procurement director and local statutory provisions. The following states may signed an "Intent to Participate Form" after the award of contract(s): Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia and West Virginia. Many other states may express interest and do not have to sign an Intent to Participate Agreement, in order to participate, if the OEM desire to provide the equipment and services to those states at the same percentages of discounts.

NASPO is a non-profit association dedicated to strengthening the procurement community through education, research, and communication. NASPO is made up of the directors of the central purchasing offices in each of the 50 States, the District of Columbia and the territories of the United States. NASPO is an organization through which the member purchasing officials provide leadership in professional public procurement, improve the quality of procurement, exchange information, and cooperate to attain greater efficiency, economy, and customer satisfaction. For additional information regarding NASPO, click on the following link: <http://www.naspo.org>.

The contracts resulting from this IFB process will be new. Most entities that are qualified to participate currently do not have contracts for this type of equipment. While some qualified entities may elect to immediately transition to the new NASPO Contracts, other qualified entities may choose to move to those agreements later. Each qualified entity has the option to choose the Contractor needed to provide the equipment offered during the execution of the Participating Agreement Addendum. It is important to note that each participating State has its own policy regarding contract usage. However, in many cases contract usage is mandatory for State agencies and voluntary for cities, counties, and political subdivisions. For additional information regarding NASPO Cooperative Contracts, click on the following link http://www.naspo.org/content.cfm/id/about_coop.

- B. **OBJECTIVE:** The objective of this IFB is to obtain the lowest cost based on the highest percentage of discount for ground maintenance equipment. Combining usage volumes states may increase the offered discounts favorable to the participating states. The savings realized by the OEM's in managing one, comprehensive Commonwealth of Virginia/NASPO Agreement rather than numerous State and local contracts should result in the most attractive discounts available in the marketplace. Additionally, by having the Commonwealth of Virginia manage only the resulting contract agreements for each manufacturer for all NASPO participating states will

also result in additional administrative savings for NASPO. This is a new contract and we do not have usage information available. We can tell you that the NASPO contracts will represent optional usage accounts for the listed manufacturers equipment or equivalents.

III. SCOPE OF WORK:

The Commonwealth of Virginia desires to establish five (5) contracts (within each category) directly with the Original Equipment Manufacturer(s) (OEM), under a firm percentage of discount contracts off the Manufacturer's Published Price List for all NASPO Participants. The percentage of discount offered must be stated in a whole percentage of discounts, and the discount offered will apply to the entire Manufacturer's Published Price List within each Category in the Pricing Schedule listed in Section XII.

After award the contracted OEM's will be required to provide Participating NASPO Entities, by state, with a list of distributor or reseller authorized to sell equipment listed on that Manufacturer's Published Price List within that state by assigned territories, "if applicable" at the contracted firm Percentage of Discount. Participating NASPO Entities that agree to participate in any contract award resulting from this solicitation shall receive the OEM's contracted Percentages of Discounts, and the authorized dealers or resellers list for that specific state. Reference Section V. listed below, entitled Contract Participation.

The specifications listed herein are intended to define the minimum level of quality and performance of the requested equipment, and are meant to be met or exceeded. However, all minimum requirements listed in each category must be met, in order, to be considered for an award under this solicitation. The specifications are not meant to be restrictive as to brand name or manufacturer. All equipment bid may be the brand name and model, or shall be an equivalent to brand names and/or any other specification elements using the "**Brand Name or equal**" clause (Reference General Terms and Conditions, Section XIII, paragraph R) in making an equivalent determination.

The brand name and minimum specification requirements describes a variety of grounds maintenance equipment that is divided into categories, based on the anticipated equipment needs of the Commonwealth of Virginia. Due to the variety and complexity of the equipment requested, multiple awards will be made by category. (Reference Section XI - Special Terms and Conditions, Item C - Award to Multiple Bidders Clause).

The IFB's specification are outlined to provide interested bidders with sufficient basic information to submit bid responses meeting minimum requirements, but is not intended to limit competition or exclude any relevant or essential data. Bidders are encouraged to expand upon the specifications to offer brand name or equivalent equipment in accordance with Section V. entitled Pricing Schedule for Equipment.

IV. BIDDER REQUIREMENTS:

- A. This Bid has the following documents that must be completed and returned with the Bidders Response to solicitation:
 - 1) Pricing Schedule and Specifications (Attachment A) include any "exceptions to equipment that differs the specifications listed in Item(s) 1 of all Category's bidding;
 - 2) Bid Tab Spreadsheet Attachment A1);
Bid Tab Spreadsheet A1 must be returned with your Bid Response in a Disk-R Format;
 - 3) Attachments A, B, C & D must be returned with your Bid Response.

- B. Sealed Bids will be received and considered from sources with the following qualifications:
- 1) Bidder shall have a full time operation with sales, consultative and service staff;
 - 2) Bidder shall be actively manufacturing the products offered in Virginia to be evidenced by sales and inventory records upon request;
 - 3) Bidder shall have facilities and inventory for field adjustments and warranty repairs;
 - 4) Bidder shall have available warehouse facilities to accommodate service statewide distribution when required.
- C. The Manufacturers must provide the Commonwealth of Virginia a list of their distributors/dealers with their response to this solicitation. Manufacturers list of authorized distributors/dealers for the Commonwealth of Virginia must be mapped and plotted and include at minimum the following information:
- 1) Contact name;
 - 2) Phone number;
 - 3) Fax number;
 - 4) Email address.
- D. Manufacturers must assure that the dealer network will comply with the terms of the contract concerning discount schedules and warranty issues.
- E. Manufacturers must ensure that the dealer network will be effectual in responding to equipment availability, delivery, and pricing problems.
- F. Bidders shall submit complete technical data, current Manufacturer's Published Price List for the Equipment quoted in each category with an itemized comparison of the equipment offered with their bid response to this solicitation. Bidders must indicate the brand or equivalent on the Pricing and Specifications Schedule listed in Section XII, for each itemized Category bid. Bidders shall indicate any deviations from the specifications listed in each category with the appropriate exception and documentation. The Commonwealth reserves the right to obtain technical data and to request clarification when deemed necessary. **Failure on the part of the Bidder to provide all requested documentation may be cause to reject the bid as non-responsive. The Commonwealth of Virginia, in its sole discretion, may choose to accept or reject any deviation(s) from the specifications.**
- G. Equipment quoted must be warranted by the manufacturer's standard warranty for no less than (1) one year after delivery and acceptance of the Equipment by the using agency, and provide no-cost protection to the Commonwealth for corrections or replacement as needed for defects in manufacturing, assembly, and parts. Bidders must provide documentation of standard warranty for the equipment offered with their response to this solicitation by category. (Reference Section XI. - Special Terms and Condition, paragraph Y, for Complete Warranty Clauses).
- H. The Equipment offered in response to this solicitation must be the newest product model of the equipment available from the manufacturer in which you are bidding. Grounds Maintenance Equipment advertised as standard equipment in manufacturer's current Published Price List shall be furnished as standard equipment. No prototype, demo products, or rebuilt product will be accepted, and offering of such a product will be cause for bid rejection. Bidders must complete Section XII, entitled Pricing Schedule for Equipment enclosed herein with their percentage of discounts offered in response to this solicitation in whole percentages only.

V. CONTRACT PARTICIPATION: Any resulting contracts shall be available to all state agencies, localities, agencies of higher education, and political subdivisions of the Commonwealth of Virginia to include, "NASPO" Participants.

A. Contractors that may wish to accept NASPO's Cooperative Participation must accept the NASPO Agreement in its entirety. Reference ATTACHMENT E entitled, National Association of State Procurement Officials (NASPO) for your review and consideration.

B. The attached WSCA-NASPO Suggested Terms & Condition, ATTCHMENT C, outlines the requirements of the consortium, on an as needed basis under the same terms and conditions', including the firm percentage of discounts pricing in the awarded contract(s) of the Commonwealth of Virginia or Participating Addendums. The resulting contract(s) will be awarded with the understanding and agreement that it is for the sole convenience of the Participating Entities. The Participating Entities reserve the right to obtain like goods from other sources at the Participating Entity's discretion.

C. Participating NASPO Entities:

- 1) After the award of a contract(s) and upon request and acceptance of a Participating NASPO Entity, the OEM shall provide each Participating NASPO Entities, by state, with a list of distributors/dealers authorized to sell equipment listed on that Manufacturer's Published Price List for that state by assigned territories, "if applicable". These documentations should be required only at the time a NASPO Participating State has been accepted by a Contractor, and added as a Participating State under the Contract by a written Addendum.
- 2) Participating NASPO Entities that agree to participate in any Contract award(s) resulting from this Bid shall receive the OEM's contracted firm Percentages of Discounts. The distributors/dealers list received from the Contractor shall include at a minimum the following information:
 - 1) Contact name;
 - 2) Phone number;
 - 3) Fax number;
 - 4) Email address.

VI. CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE:

Each resulting Contract awarded under this solicitation will consist of the following documents in sequence of priority as listed below:

- 1.Commonwealth of Virginia's Solicitation
- 2.General and Special Terms and Conditions where applicable;
- 3.Participating Entity's "Participating Addendum";
- 4.NASPO's Terms and Conditions;
- 5.Bidder's Response to the Solicitation.

The documents listed above shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to the documents in the order listed above. Contractor's terms and conditions that apply to the Contract Agreement are only those that are expressly accepted by the Lead State. All documents must be in writing and attached to the resulting Contract Agreement.

VII. LEAD OFFICE CONTACT INFORMATION:

The Commonwealth of Virginia, Division of Purchase and Supply is the Lead State conducting this procurement and subsequent contract management. The Commonwealth of Virginia's General and Special Terms and Condition will govern the resulting contracts. The Lead State's assigned Contract Administrator for any Contract(s) resulting from this solicitation at the Department of General Services - Division of Purchase and Supply is:

Mary L. Hicks-Coston, VCO
Purchasing Manager II
1111 East Broad Street
Richmond, VA 23219
Email: mary.coston@dgs.virginia.gov
Voice: 804-786-4068
Fax: 804-225-3707

VIII. EQUIPMENT REPLACEMENTS, SUBSTITUTION & OBSOLETE ITEMS:

Substitution of a manufacturer product, brand, or equipment after award of contract is expressly prohibited unless approved in writing by the Division of Purchases and Supply's Procurement Officer. The agency at its discretion may require the Contractor to provide a substitute item of equivalent or better quality, subject to the approval by the Contract Officer, at the same contracted percentage of discount(s), if the product for which the contract was awarded becomes unavailable or obsolete to the dealer/distributor. Upon notification by the manufacturer to the dealer/distributor, stating that a product is being discontinued, the Contractor (OEM) must contact the Contract Officer in writing for verification and consideration. Any obsolete or discounted items must have written approval from the Contract Officer prior to making the product available to the end-users. Upon written approval from the Contract Officer, the Contractor may offer the new product as a direct or similar replacement to all agencies and end users. A Contract Modification will incorporate the new Published Price List that contains the new equipment at the time of renewal annually. The Contractor must offer the same percentage of discount based on the contract award for all replacements for obsolete/discontinued items or equipment. Approval is contingent upon compliance with the following conditions:

- A. The Contractor requests approval in writing to the Contract Officer.
- B. The replacement equipment must offer the same or greater specifications than the product being replaced. The replacement equipment shall meet or exceed all performance level minimum specifications including accessories.
- C. The replacement equipment must be offered at the same percentage of discounts.

IX. BID SUBMISSION FOR SEALED "INVITATION FOR BID" (IFB): Only paper Bid Responses will be accepted for this solicitation due to the complexity of bid requirements. Read this entire term and condition prior to submitting your bid response.

- A. **PAPER SUBMISSION:** For paper submissions, bidder must print, sign and return their Paper Bid Response document for this Invitation for Bids (IFB) and submit it along with other requested documents. The "Paper Bid Solicitation may be printed from the Division of Purchasing and Supply eVA web site at: www.eva.virginia.gov. To print and submit a paper Bid, see "Response Options" in eVA, **click on "Respond By Mail"**, then click to send to

printer or go to the eVA website and click on "Bids and Awards (VBO. In the Keyword Search field, type in "2280MLC" (no quotes) and click the "Search" button. Find IFB # E194-194-2280MLC and click on the "Details" button. To view the "Bid Paper Response" document, go to the "Response Options" box in the upper right corner of the screen, and click on "Paper Response". To print the "Bid Paper Response" document, click the "Send to Printer" box.

In submitting a paper response to a Bid, the bidder shall return their Bid Response in a Sealed Envelope and identified as follows:

1. Name of Bidder
2. Street or Box Number
3. City, State, Zip Code
4. Close Date and Time
5. Bid Number
6. Bid Description
7. Contract Officer.

For Express delivery, the Sealed Bid envelope should be addressed as directed below:

Express delivery or hand delivery:

Division of Purchases and Supply
6th Floor, Reception Desk
Patrick Henry Building
1111 East Broad Street
Richmond, VA 23219

Mail Delivery: The bidder shall allow sufficient time for a Bid to make its way through the Commonwealth's Mail Security Processing System prior to delivery to the specified location. **Mailed Bids** shall be addressed and submitted to the address listed below.

Department of General Services
Division of Purchases and Supply
Attention: BID TAB - 6th Floor
P.O. Box 1199
Richmond, VA 23218

If a Bid Response is not contained in a sealed envelope as indicated above, the bidder takes the risk that the envelope may be inadvertently opened and the information compromised, which may cause the Bid to be disqualified. Bids may be hand delivered to the designated location listed above. Any other un-requested documents and correspondence should not be placed in the envelope. **Bid Responses submitted by e-mail or by fax are not acceptable.**

Hand Delivery: If you are hand delivering your Bid, you must allow extra time to ensure you are able to deliver your Bid by the required date and time, due to parking difficulties downtown. Building entry is not permitted on the Broad Street entrance. You must use the Darden Garden entrance at the rear of the Patrick Henry Building. Photo ID is required for building entry – no exceptions.

It is the bidder's responsibility to ensure that the Bid is delivered to the correct delivery address and place before the due date and time. The Commonwealth assumes no responsibility for late Bids regardless of reason.

X. GENERAL TERMS AND CONDITIONS

- A. **VENDORS MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.eva.virginia.gov under "Vendors Manual" on the vendors tab.
- B. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- C. **ANTI-DISCRIMINATION:** By submitting their bids, bidders certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - c. Notices, advertisements, and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

- D. **ETHICS IN PUBLIC CONTRACTING:** By submitting their bids, bidders certify that their bids are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer or subcontractor in connection with their bid, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
- E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
- F. **DEBARMENT STATUS:** By submitting their bids, bidders certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
- G. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.
- H. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFBs:** Failure to submit a bid on the official state form provided for that purpose shall be a cause for rejection of the bid. Modification of or additions to any portion of the Invitation for Bids may be cause for rejection of the bid; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as nonresponsive. As a precondition to its acceptance, the Commonwealth may, in its sole discretion, request that the bidder withdraw or modify nonresponsive portions of a bid which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the contract shall be effective unless reduced to writing and signed by the parties.
- I. **CLARIFICATION OF TERMS:** If any prospective (bidder/offeror) has questions about the specifications or other solicitation documents, the prospective (bidder/offeror) should contact the buyer whose name appears on the face of the solicitation no later than seven working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.
- J. **PAYMENT:**
1. To Prime Contractor:
 - a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social

security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).

- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
 - c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
 - d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
 - e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).
2. To Subcontractors:
- a. A contractor awarded a contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
 - b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.
3. Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM

procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.

4. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.
- K. **PRECEDENCE OF TERMS:** The following General Terms and Conditions *VENDORS MANUAL*, APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS, CLARIFICATION OF TERMS, PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
- L. **QUALIFICATIONS OF BIDDERS:** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the bidder to perform the services/furnish the goods and the bidder shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect bidder's physical facilities prior to award to satisfy questions regarding the bidder's capabilities. The Commonwealth further reserves the right to reject any bid if the evidence submitted by, or investigations of, such bidder fails to satisfy the Commonwealth that such bidder is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.
- M. **TESTING AND INSPECTION:** The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- N. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.
- O. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:
 1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or

- c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.
- P. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.
- Q. **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.
- R. **USE OF BRAND NAMES:** Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make, or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article, which the public body, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The bidder is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the bidder clearly indicates in its bid that the product offered is an equivalent product, such (bid/proposal) will be considered to offer the brand name product referenced in the solicitation.
- S. **TRANSPORTATION AND PACKAGING:** By submitting their bids, all bidders certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

- T. **INSURANCE:** By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or offeror further certifies that the contractor and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
 2. Employer's Liability - \$100,000.
 3. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
- U. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA VBO (www.eva.virginia.gov) for a minimum of 10 days.
- V. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

- W. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-

based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

- X. **eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION:** The eVA Internet electronic procurement solution, website portal www.eVA.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. All bidders must register in eVA and pay the Vendor Transaction Fees specified below; failure to register will result in the bid/proposal being rejected.

Effective July 1, 2011, vendor registration and registration-renewal fees have been discontinued. Registration options are as follows:

- a. eVA Basic Vendor Registration Service: eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, electronic bidding, and the ability to research historical procurement data available in the eVA purchase transaction data warehouse.
- b. eVA Premium Vendor Registration Service: eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments.

Vendor transaction fees are determined by the date the original purchase order is issued and are as follows:

- a. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of \$500 per order.
- b. For orders issued August 16, 2006 thru June 30, 2011, the Vendor Transaction Fee is:
 - (i) DMBE-certified Small Businesses: 1%, capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small Businesses: 1%, capped at \$1,500 per order.
- c. For orders issued July 1, 2011 thru June 30, 2012, the Vendor Transaction Fee is:
 - (i) DMBE-certified Small Businesses: 0.75%, capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small Businesses: 0.75%, capped at \$1,500 per order.
- d. For orders issued July 1, 2012 and after, the Vendor Transaction Fee is:
 - (i) DMBE-certified Small Businesses: 1%, capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small Businesses: 1%, capped at \$1,500 per order.

The specified vendor transaction fee will be invoiced, by the Commonwealth of Virginia Department of General Services, approximately 30 days after the corresponding purchase order is issued and payable 30 days after the invoice date. Any adjustments (increases/decreases) will be handled through purchase order changes.

- Y. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.
- Z. **BID PRICE CURRENCY:** Unless stated otherwise in the solicitation, bidders shall state bid/offer prices in US dollars.
- AA. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the *Virginia Public Procurement Act* shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

XI. **SPECIAL TERMS AND CONDITIONS**

- A. **ADVERTISING** In the event a contract is awarded for supplies, equipment, or services resulting from this Bid/Bid, no indication of such sales or services to the Commonwealth will be used in product literature or advertising. The contractor shall not state in any of its advertising or product literature that Commonwealth has purchased or uses any of its products or services, and the contractor shall not include Commonwealth in any client list in advertising and promotional materials.
- B. **AUDIT:** The contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
- C. **AWARD TO MULTIPLE BIDDERS:** The award will be made to the responsive and responsible bidder for each product line category that offers the highest percentage discount from the Manufacturer's Published Price List. Each Bidder shall quote the percentage of discount from the Price List cited herein and shall furnish a copy with their Bid submission. **The percentage discount offered by each bidder must be a single percentage discount applicable to all Equipment within that category.** The percentage discounts shall remain firm for the duration of the contract.
1. All Equipment listed in this solicitation will be awarded based on a discount from Manufacturer's Published Price List. The basis of award of the contract is "discount from Price List", the Published Price List Sheets shall be the currently published National Standard Manufacturer's Price lists.
 2. The award(s) will be made per approved manufacturer's Equipment listed on each Manufacturer's Published Price List that meets or exceeds the specification requirements of this Bid. The award will include that manufacturer's entire product line within that category, which includes; but not limited to warranty.
 3. The Commonwealth reserves the right to conduct any tests it may deem advisable and to make all evaluations. The Commonwealth also reserves the right to reject any or all Bids,

in whole or in part, to waive informalities, and to delete items prior to making the award, whenever it is deemed in the sole opinion of the procuring public body to be in its best interest.

- D. **MANUFACTURER'S PUBLISHED PRICE LIST AND CATALOGS:** When the basis of the award is a percentage discount, the Contractor shall furnish current catalogs and published price lists with their response to the Bid, which shall become a part of the Contract. The Contractor's name and address shall appear on all catalogs and price lists. Where a price list shows more than one column of prices, the contractor shall clearly identify the column, which represents the gross prices charged to the Commonwealth. Each Bidder shall quote a firm percentage of discount from their Current Price List submitted and shall furnish a copy with their Bid submission. Upon request, the Contractor shall furnish catalogs and price lists for items awarded directly to the using agencies.
- E. **BID ACCEPTANCE PERIOD:** Any bid in response to this Bid shall be valid for forty-five (45) days. At the end of the forty-five (45) days, the Bid may be withdrawn at the written request of the bidder. If the Bid is not withdrawn at that time, it remains in effect until an award is made or the Bid is canceled.
- F. **BIDDER UNDERSTANDING OF REQUIREMENTS:** Questions regarding the Bid shall be submitted via e-mail to mary.coston@dgs.virginia.gov no later than 1:00 pm on Wednesday, January 17, 2012. If the bidder does not clearly understand all of the Invitation for Bid (IFB) requirements, it is the bidder's responsibility to inquire about and obtain clarification on the requirements. Verbal questions are discouraged. The Commonwealth's verbal responses to questions are not binding.

There shall be no communication of any type, written or otherwise, by any prospective bidder (including any sub-contractor, bidder's agent or other type of bidder representative) with any other agencies of the Commonwealth of Virginia. The bidder must contact Ms. Mary Coston, DPS Contract Officer, on any aspect of this IFB, until and unless a bidder is instructed otherwise by the DPS Contract Officer. Bids shall be based on the information presented in this Bid, which may be changed only by written addendum by the DPS Contract Officer. Failure to comply with this requirement may disqualify the bidder from participation on this Bid.

Important Note: Bidders are responsible for checking the status of the Bid on eVA (Virginia Business Opportunities) on a regular basis for any updates, changes, addendums, etc...

- G. **BID PRICES:** Bid price shall be in the form of a fixed percentage of discounts off the most recent manufacturers published price list that has been approved and incorporated as part of the Contract. The published price list may be in the form of an Internet Web site, or hard document, but the Commonwealth will not accept nor shall the Contractor prepare and publish a list exclusive to the Commonwealth of Virginia. All percentage of discounts shall include all applicable charges F.O.B Destination for orders meeting the minimum order criteria of \$500.00. Bidders must identify the specific manufacturer's published price list, catalog, or Web site, and effective date upon which their Bid percentage discounts are based, and include a copy of same reflecting all product lines Bid.

The manufacturers published price lists are subject to change at any time; however; price escalations are only permitted at the end of each 365-day period effective annually at the time of renewal, and only where verified to the satisfaction of the purchasing officer. Agencies purchase orders placed before price increase is authorized shall be delivered at the purchase order price. The percentage discount will remain the same throughout the term of the contract,

to include all renewals, and shall apply to any new equipment, which may be introduced and added to the manufacturer's product line. Public bodies will apply the firm fixed discount to the manufacturer's approved published price list in effect that has been incorporated as part of the Contract by the Purchasing Officer, at the time the order is placed. However, should the price decrease between receipt of the order, and shipment of the order, the Contractor shall invoice at the new lowest discounted price. Price increases after placement of order will not be accepted.

- H. **PRICE ESCALATION/DE-ESCALATION:** Price increases against the Manufacturers Published Price List will not be authorized for 365 calendar days after the effective date of the contract award. Price escalations may be permitted only at the end of this period, on an annual basis during the term of the Contract, and only where verified to the satisfaction of the purchasing officer. Consumers Price Indices, Producers Price Indices or other appropriate indices will be used as a guide to determine price increases or decreases. However, "across the board" price decreases are subject to implementation at any time and shall be immediately conveyed to the Commonwealth. However, "across the board" price decreases are subject to implementation at any time and shall be immediately conveyed to the Commonwealth.

Contractor shall give not less than 30 days advance notice of any price increase to the purchasing officer. Any approved price changes will be effective only at the beginning of the calendar month following the end of the full 30-day notification period. The contractor shall document the amount and proposed effective date of any general change in the price of materials. Documentation shall be supplied with the Contractor's request for increase, which will:

- (1) verify that the requested price increase is general in scope and not applicable just to the Commonwealth of Virginia; and
- (2) verify the amount or percentage of increase, which is being passed on to the contractor by the contractor's suppliers.

The purchasing officer will notify the using agencies and Contractor in writing of the effective date of any increase, which it approves. However, the contractor shall fill all purchase orders received prior to the effective date of the price adjustment at the old contract prices. The contractor is further advised that decreases, which affect the cost of materials, be required to be communicated immediately to the purchasing office.

- I. **PURCHASE VOLUME REPORT:** The Contractor shall furnish to the Commonwealth annual volume reports, on the anniversary of each contract term, of the sales made under the Contract. Contracts exceeding one-year with renewals, the Contractor shall furnish reports ninety-(90) calendar days prior to the expiration date of the contract term for each consecutive twelve-month period. Reports shall be sent to the attention of the appropriate Contract Officer. Failure to submit this information in the required time may result in disqualification from the Contract Renewal, and bidding on the next solicitation for these commodities.

Each report shall be in two segments as follows:

- a. Report for the total dollar volume of purchases and the total number of each item ordered by authorized NASPO users, State agencies, institutions of higher education and localities;
- b. Report for the total dollar volume of purchases and number of each item ordered by all Commonwealth of Virginia agencies, and public bodies (e.g. cities, towns, counties, schools and authorities, etc.), if authorized users of this contract;
- c. The name of the person responsible for this report shall be given to the Contract Officer upon award of a contract.

- J. **POINT OF DELIVERY:** All Equipment shipped to any authorized end user's location shall be shipped F.O.B. DESTINATION, unless otherwise stated in the Contract. The materials must be delivered to the "Ship to" address indicated on the agency's purchase order.
- K. **RETURN:** Exchange for credit may be accomplished by ordering agencies consistent with the contractor's published return goods policy. A copy of bidder's published return goods policy shall accompany the Bid. **Failure to submit the policy may be cause for rejection of the Bid.**
- L. **CANCELLATION OF CONTRACT:** The Commonwealth reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

An agencies employee is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the Contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material. The Purchasing Agency will document and notify the Contract Officer of an omission or failure by the Contractor to perform to the standard of the manufacturer.

- M. **CONTACT INFORMATION:** The bidders shall provide a list of the telephone numbers, facsimile number, e-mail address, name of responsible persons of your company who may be contacted regarding this contract and required reports.
- N. **MAINTENANCE MANUALS:** The contractor shall provide with Equipment an operations and maintenance manual with wiring diagrams, parts list, and a copy of all warranties.
- O. **MINIMUM ORDER:** Orders will be F.O.B. delivery to ordering agency within the Commonwealth of Virginia. For orders of less than \$500.00, the Contractor will be permitted to add the actual transportation cost prepaid and added (PPD&ADD) to invoice for payment or the agency may purchase such products off contract from other sources. Partial shipments of less than minimum order value, which are made at the option of the contractor, shall be made F.O.B. Destination with no transportation chares added to the invoice. If at the agency's request shipments are below the minimum order value, the contractor may add actual transportation to invoice for payment.
- P. **PRODUCT INFORMATION:** The bidder shall clearly and specifically identify the product being offered and enclose complete and detailed descriptive literature, catalog cuts and specifications with the Bid to enable the Commonwealth to determine if the product offered meets the requirements of the Bid. Failure to do so may cause the Bid to be considered nonresponsive.
- Q. **QUANTITIES:** Any quantities (if any) set forth in this Bid are estimates only, and the Contractor shall supply at Bid prices actual quantities as ordered, regardless of whether such total quantities are more or less than those shown.
- R. **EXEMPTION OPTION:** The Commonwealth reserves the right to competitively purchase Equipment for any single agency order with an amount of \$75,000.00 or more on a separate Bid program from the same or different sources of supply.

- S. **IDENTIFICATION OF BID ENVELOPE:** If a special envelope is not furnished, or if return in the special envelope is not possible, the signed bid/proposal should be returned in a separate envelope or package, sealed and identified as follows:

From: _____
Name of Bidder Due Date Time

Street or Box Number IFB No.

City, State, Zip Code IFB Title

Name of Contract/Purchasing Officer Mary L. Hicks-Coston

The envelope should be addressed as directed on Page 1 of the solicitation.

If a bid/proposal not contained in the special envelope is mailed, the bidder or offeror takes the risk that the envelope, even if marked as described above, may be inadvertently opened and the information compromised which may cause the bid or proposal to be disqualified. Bids/proposals may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other bids/proposals should be placed in

- T. **DELIVERY:** All orders shall be delivered to the ordering agency within 30 calendar days after receipt of order.
- U. **MANUFACTURER/SHIPPING POINT:** The bidders shall supply the name and address of the manufacturer of each item offered and the shipping point.
- V. **TRAINING AND INSTALLATION:** The awarded Contractor(s) shall provide on-site in-service training (if required) to the personnel of the ordering Agency to ensure proper use of equipment, the training team should be lead by a representative and/or one instructional video/DVD in English (if applicable). This service training shall be provided at no additional cost to the Commonwealth. Training shall be held at the ordering Agency facility.
- W. **RENEWAL OF CONTRACT:** THE INITIAL TERM OF THE CONTRACT WILL BE FOR TWO YEARS BEGINING APPROXIMATELY April 1, 2012 through February 28, 2014. Thereafter, the contract may be renewed by the Commonwealth upon written agreement of both parties for three (3) successive-one-year periods, under the terms of the then current contract, and at a reasonable time (approximately 90 days) prior to the expiration.
- X. **SPECIAL EDUCATIONAL OR PROMOTIONAL DISCOUNTS:** The contractor shall extend any special educational or promotional sale prices or discounts immediately to the Commonwealth during the term of the contract. Such notice shall also advise the duration of the specific sale or discount price.
- Y. **WARRANTY:** All materials and equipment shall be fully guaranteed against defects in material and workmanship for a period of one-year (1) following date of delivery. Should the owner note any defect, the Purchasing Officer will notify the Contractor of such defect or non-conformance. Notification will state either (1) that the Contractor shall replace or correct, or (2) the owner does not require replacement or correction, but an equitable adjustment to the contract price will be negotiated.

If the Contractor is required to correct or replace, it shall be at no cost to the Commonwealth and shall be subject to all provisions of this clause to the same extent as materials initially delivered. If the Contractor fails or refuses to replace or correct the deficiency, the office issuing the purchase order may have the materials corrected or replaced with similar items and charge the Contractor the costs occasioned thereby or obtain an equitable adjustment in the contract price. The Contractor agrees that the supplies or services furnished under any award resulting from this Bid shall be covered by the most favorable commercial warranties the Contractor gives any customer for such supplies or services and that the rights and remedies provided therein are in addition to and do not limit those available to the Commonwealth by any other clause of this Bid.

- Z. **FINANCIAL WARRANTY:** Contractor shall ensure that the prices, discounts, incentives, and other financial terms (collectively, the “financial deal”) applicable to purchases under this Contract is always at least as favorable to the purchaser as the financial deal that the Contractor or its affiliates make available to any public body in Virginia for the same good(s)/service(s) outside this Contract. Throughout the term of this Contract, if Contractor (or any affiliate) makes a better financial deal available to a public body in Virginia for any good(s)/service(s) available under this Contract, Contractor shall immediately notify DGS of the details and, at DGS’s option, sign an amendment to this Contract, so that an equivalent financial deal for the affected good(s)/service(s) is also available as an option under this Contract. Contractor may request exemption if the better financial deal was for a spot purchase, and DGS shall grant such request if DGS in good faith finds that the spot purchase involved special circumstances affecting cost that would make it unfair to apply an equivalent financial deal outside of that spot purchase. Upon DGS’s request (and annually on August 1), Contractor shall submit to DGS an affidavit certifying full compliance with this Section. The Contractor (and any affiliate) shall waive any contractual or other right that inhibits any public body in Virginia from disclosing to DGS or others the financial terms made available to the public body, and upon request from DGS, Contractor shall ensure that a signed confirmation of the waiver is provided to the public body and DGS. As used in this Section, an affiliate is any entity that controls, is controlled by, or is under common control with, the Contractor.

- AA. **eVA BUSINESS-TO-GOVERNMENT CONTRACTS AND ORDERS:** The Bid/contract will result in multiple purchase orders with the eVA transaction fee specified below assessed for each order.

- a. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of \$500 per order.
- b. For orders issued August 16, 2006 and after, the Vendor Transaction Fee is:
 - (i) DMBE-certified Small Businesses: 1%, Capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small Businesses: 1%, Capped at \$1,500 per order.

The eVA transaction fee will be assessed approximately 30 days after each purchase order is issued. Any adjustments (increases/decreases) will be handled through eVA change orders.

Internet electronic procurement solution, website portal www.eva.virginia.gov , streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following:

If this Bid is for a term contract, failure to provide published price lists or index page catalog for items awarded will be just cause for the Commonwealth to reject your Bid/offer or terminate this contract for default.

BB. **STATE CORPORATION COMMISSION IDENTIFICATION NUMBER**: Pursuant to Code of Virginia, §2.2- 4311.2 subsection B, a Bidder or bidder organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its Bid or Bid the identification number issued to it by the State Corporation Commission (SCC). Any Bidder or bidder that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its Bid or Bid a statement describing why the Bidder or bidder is not required to be so authorized. Indicate the above information on the SCC Form provided. Contractor agrees that the process by which compliance with Titles 13.1 and 50 is checked during the Bid stage (including without limitation the SCC Form provided) is streamlined and not definitive, and the Commonwealth's use and acceptance of such form, or its acceptance of Contractor's statement describing why the Bidder or bidder was not legally required to be authorized to transact business in the Commonwealth, shall not be conclusive of the issue and shall not be relied upon by the Contractor as demonstrating compliance (See Attachment C).

ATTACHMENT B

Small Business Sub-Contracting

Small Businesses for this Procurement Definitions

Small Business: "Small business" means an independently owned and operated business which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years. Note: This shall not exclude DMBE-certified women-and minority-owned businesses when they have received DMBE small business certification.

Women-Owned Business: Women-owned business means a business concern that is at least 51% owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, or in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, and both the management and daily business operations are controlled by one or more women who are citizens of the United States or non-citizens who are in full compliance with the United States immigration law.

Minority-Owned Business: Minority-owned business means a business concern that is at least 51% owned by one or more minority individuals or in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals.

All small businesses must be certified by the Commonwealth of Virginia, Department of Minority Business Enterprise (DMBE) by the due date of the solicitation to participate in the SWAM program. Certification applications are available through DMBE online at www.dmbv.virginia.gov (Customer Service).

Bidder Name: _____
Preparer Name: _____ **Date:** _____

Instructions

- A. If you are certified by the Department of Minority Business Enterprise (DMBE) as a small business, complete only Section A of this form. This shall not exclude DMBE-certified women-owned and minority owned businesses when they have received DMBE small business certification.
- B. If you are not a DMBE-certified small business, complete Section B of this form. For the bidder to receive credit for the small business subcontracting plan evaluation criteria, the bidder shall identify the portions of the contract that will be subcontracted to DMBE-certified small business in this section. Points will be assigned based on each bidder's proposed subcontracting expenditures with DMBE-certified small businesses for the initial contract period as indicated in Section B in relation to the bidder's total price.

Section A

If your firm is certified by the Department of Minority Business Enterprise (DMBE), are you certified as a (**check only one below**):

- _____ Small Business
_____ Small and Women-owned Business
_____ Small and Minority-owned Business

Certification number: _____ Certification Date: _____

Section B

Populate the table below to show your firm's plans for utilization of DMBE-certified small businesses in the performance of this contract. This shall not exclude DMBE-certified women-owned and minority-owned businesses

when they have received the DMBE small business certification. Include plans to utilize small businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc.

B. Plans for Utilization of DMBE-Certified Small Businesses for this Procurement

Small Business Name & Address DMBE Certificate #	Status if Small Business is also: Women (W), Minority (M)	Contact Person, Telephone & Email	Type of Goods and/or Services	Planned Involvement During Initial Period of the Contract	Planned Contract Dollars During Initial Period of the Contract
Totals \$					

ATTACHMENT C

Vendor Data Form

Note: The following information is required as part of your response to this solicitation. Failure to complete this form and provide complete information as requested may result in our finding your offer to be non-responsive.

1. **Qualification:** The vendor must have the capability and capacity in all respects to satisfy fully all of the contractual requirements.

2. **Vendor's Primary Contact** *(Please print):*

Name: _____ Position/Title: _____

Phone: _____ Email Address: _____

Address: _____ City _____, State _____, Zip _____

3. **Years in Business:** Indicate the length of time you have been in business providing this type of good or service: _____ Years _____ Months

4. **Vendor Information:**

FIN or FEI Number: _____ if Company, Corporation or Partnership

Social Security Number: (if Individual) _____

5. **References:** Indicate below a listing of at least four (4) current or recent accounts, either commercial or governmental, that your company is servicing, has serviced, or has provided like goods and/or services for. Failure to provide any information requested below may result in Bid being declared nonresponsive.

A. Company: _____ **Contact:** _____

Phone: _____ Fax: _____

Email: _____ Project: _____

Dates of Service: _____ \$ Value: _____

B. Company: _____ **Contact:** _____

Phone: _____ Fax: _____

Email: _____ Project: _____

Dates of Service: _____ \$ Value: _____

C. Company: _____ **Contact:** _____

Phone: _____ Fax: _____

Email: _____ Project: _____

Dates of Service: _____ \$ Value: _____

D. Company: _____ Contact: _____

Phone: _____ Fax: _____

Email: _____ Project: _____

Dates of Service: _____ \$ Value: _____

I certify the accuracy of this information:

Signed: _____ Title: _____ Date: _____

ATTACHMENT C

State Corporation Commission Form

Virginia State Corporation Commission ("SCC") registration information: The undersigned Bidder:

☐ is a corporation or other business entity with the following SCC identification number: _____

-OR-

☐ is not a corporation, limited liability company, limited partnership, registered limited liability partnership, or business trust **-OR-**

☐ is an out-of-state business entity that does not regularly and continuously maintain as part of its ordinary and customary business any employees, agents, offices, facilities, or inventories in Virginia (not counting any employees or agents in Virginia who merely solicit orders that require acceptance outside Virginia before they become contracts, and not counting any incidental presence of the bidder in Virginia that is needed in order to assemble, maintain, and repair goods in accordance with the contracts by which such goods were sold and shipped into Virginia from bidder's out-of-state location) **-OR-**

☐ is an out-of-state business entity that is including with this bid an opinion of legal counsel which accurately and completely discloses the undersigned bidder's current contacts with Virginia and describes why those contacts do not constitute the transaction of business in Virginia within the meaning of § 13.1-757 or other similar provisions in Titles 13.1 or 50 of the Code of Virginia.

****NOTE**** >> Check the following box if you have not completed any of the foregoing options but currently have pending before the SCC an application for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow you to submit the SCC identification number after the due date for bids (the Commonwealth reserves the right to determine in its sole discretion whether to allow such waiver): ☐

Signature: _____ **Date:** _____

Name: _____
Print

Title: _____

Name of Firm: _____

ATTACHMENT E

SUGGESTED STANDARD CONTRACT TERMS AND CONDITIONS NATIONAL ASSOCIATION OF STATE PROCUREMENT OFFICIALS (NASPO) AND WESTERN STATES CONTRACTING ALLIANCE (WSCA)

PARTICIPANTS: The National Association of State Procurement Officials ("NASPO") is a national association of Chief Procurement Officers that has established a procurement cooperative for state government departments, institutions and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the NASPO Member States and territories of the United States.

The Western States Contracting Alliance (WSCA) is fifteen members of NASPO who have focused on creating and managing multi-state cooperative contracts since 1993.

Obligations under contracts that result from this cooperative procurement are limited to those states and other eligible purchasing entities that execute a Participating Addendum.

Financial obligations of Participating States are limited to the orders placed by the departments or other state agencies and institutions having available funds.

Participating States incur no financial obligations on behalf of political subdivisions.

Unless otherwise specified in the solicitation, the resulting master price agreement(s) will be permissive.

DEFINITIONS:

"Lead State" means the State conducting this cooperative solicitation and centrally administering any resulting master price agreement with the permission of the Signatory States.

"Master Price Agreement" means this cooperative solicitation and contract, between the designated Lead State and the awarded contractors.

"Offer" or **"Bid"** or **"Proposal"** refers to the offer submitted in response to a solicitation, whether denominated as an invitation to bid, invitation for bid, request for proposal, or otherwise. **"Bidder"** or **"Offeror"** similarly refers to the person, company, or other entity submitting the bid or proposal that constitutes an offer capable of acceptance, regardless of the solicitation method used.

"Permissive Price Agreement" means that placement of orders through the price agreement is discretionary with Purchasing Entities. They may satisfy their requirements through the master price agreement without using statutory or regulatory procedures (e.g. invitations for bids) to solicit competitive bids or proposals. Purchasing Entities may, however, satisfy requirements without using the master price agreement so long as applicable procurement statutes and rules are followed.

"Participating Addendum" means a bilateral agreement executed by a contractor and a Participating State (or a political subdivision with the consent of its state's chief procurement officer) that clarifies the operation of the master price agreement for the State concerned, e.g. ordering procedures specific to a State, and may add other state-specific language or other requirements.

"Participating State (Entity)" means a state (or entity (not a state), with the prior approval of its state chief procurement official) that has executed a Participating Addendum as required by this Master Price Agreement.

**SUGGESTED STANDARD CONTRACT TERMS AND CONDITIONS
NATIONAL ASSOCIATION OF STATE PROCUREMENT OFFICIALS (NASPO)
AND
WESTERN STATES CONTRACTING ALLIANCE (WSCA)**

“Purchasing Entity” means a Participating State, or other legal entity, properly authorized by a Participating State to enter into a contract for the purchase of goods and/or services described in the cooperative procurement. Unless otherwise limited in the cooperative procurement or in a Participating Addendum, political subdivisions of Participating States are deemed Purchasing Entities.

REPORTING AND ADMIN FEES

A. Reporting and Administrative Fees

1. The Contractor agrees to provide quarterly utilization reports to NASPO or WSCA and the Lead State Contract Administrator by the 15th of the month following the end of the previous quarter. (Ex. Purchases during January are reported by the 15th of April). The report shall be in the format developed by the Lead State and supplied to the Contractor prior to or upon execution of the Contract.

2. The Contractor agrees to provide quarterly Administrative Fee check payable to NASPO for an amount equal to one-half of one percent (0.005) of the net sales for the period. The form to be submitted with the check, as well as the mailing address, will be supplied to the Contractor after the execution of the Contract. Payment shall be made in accordance with the following schedule:

<u>Period End</u>	<u>Payment & Report Due</u>
June 30	July 31
September 30	October 31
December 31	January 31
March 31	April 30

3. The Contractor agrees to include all Reseller/Distributor/VAR/Agent sales in the monthly utilization reports described above.

4. The utilization reports shall be submitted to the Lead State Contract Administrator via electronic mail in a Microsoft Excel spreadsheet format, or other methods such as direct access to Internet or other databases.

5. If requested by the Lead State Contract Administrator, the Contractor agrees to provide supporting Purchase Order detail records on mutually agreed media in a mutually agreed format.

6. The failure to file the utilization reports and fees on a timely basis shall constitute grounds for the removal of the Contractor's primary representative, suspension of this Agreement or termination of this Agreement for cause.

7. The NASPO, WSCA and the Lead State Contract Administrator shall be allowed access to all reports from all Purchasing Entities.

B. Participating Entity Reports and Fees

1. Participating Entities may require an additional fee be paid directly to the State on purchases made by Purchasing Entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments shall be incorporated in to the Participating Addendum that is made a part of this Agreement. The Contractor may adjust pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of that State. All such agreements shall have no affect whatsoever on the NASPO administrative fee or the prices paid by the Purchasing Entities outside the jurisdiction of the State requesting the additional fee.

**SUGGESTED STANDARD CONTRACT TERMS AND CONDITIONS
NATIONAL ASSOCIATION OF STATE PROCUREMENT OFFICIALS (NASPO)
AND
WESTERN STATES CONTRACTING ALLIANCE (WSCA)**

2. Purchasing Entities will be encouraged to use the reporting format developed by the Lead State for their reporting needs. However, the Contractor agrees to provide additional reports to Purchasing Entities upon agreement by both parties as to the content and delivery methods of the report. Methods of delivery may include direct access to Internet or other databases.

3. Each State Purchasing Entity shall be allowed access to reports from all entities within that State.

QUANTITY ESTIMATES: Estimated quantities are informational and not to be construed as a warranty of accuracy of historical or anticipated volumes or a guarantee to purchase any amount.

SPECIFICATIONS: Any deviation from specifications must be clearly indicated by offeror, otherwise, it will be considered that the proposal is in strict compliance. When BRAND NAMES or manufacturers' numbers are stated in the specifications they are intended to establish a standard only and are not restrictive unless the solicitation says "no substitute." Offers will be considered on other makes, models or brands having comparable quality, style, workmanship and performance characteristics. Alternate proposals offering lower quality or inferior performance will not be considered.

ACCEPTANCE OR REJECTION OF BIDS AND PROPOSALS: The Lead State reserves the right to accept or reject any or all bids or proposals, or parts of bids or proposals, and to waive informalities therein.

SAMPLES: Generally, when required, samples will be specifically requested in the solicitation. Samples, when required, are to be furnished free of charge. Except for those samples destroyed or mutilated during testing, samples will be returned at an offeror's request, transportation collect.

CASH DISCOUNT TERMS: Offeror may quote a cash discount based upon early payment; however discounts offered for less than 30 days will not be considered in making the award. The date from which discount time is calculated shall be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date shall be the date of acceptance of the merchandise.

TAXES: Offered prices shall be exclusive of state sales and federal excise taxes. Where the state government entities are not exempt from sales taxes on sales within their state, the contractor shall add the sales taxes on the billing invoice as a separate entry.

MODIFICATION OR WITHDRAWAL OF BIDS AND PROPOSALS: Bids and proposals may be modified or withdrawn prior to the time set for receipt of bids or proposals. After the time set for receipt of bids or proposals, no proposal may be modified or withdrawn.

PATENTS, COPYRIGHTS, ETC: The Contractor shall release, defend, indemnify, and hold harmless NASPO, the Participating States, and the Purchasing Entities, as well as the officers, agents and employees of NASPO, the Participating States and the Purchasing Entities, from liability of any kind or nature, including the Contractor's use of any copyrighted or uncopyrighted composition, process, patented or unpatented invention, article or appliance furnished or used in performance of this contract.

AWARD: Multiple master price agreements may be awarded as a result of this solicitation. Awards in requests for proposals (competitive sealed proposals) shall be made to the responsible offeror(s) whose

**SUGGESTED STANDARD CONTRACT TERMS AND CONDITIONS
NATIONAL ASSOCIATION OF STATE PROCUREMENT OFFICIALS (NASPO)
AND
WESTERN STATES CONTRACTING ALLIANCE (WSCA)**

proposals are determined to the most advantageous to the Participating States, taking into consideration price and the other evaluation factors set forth in the solicitation. Unless otherwise stated in the solicitation, an award in a solicitation denominated as an invitation to bid will be made to the lowest responsive and responsible bidder(s) meeting specifications and all bid terms and conditions. The Participating States reserve the right to award items separately or by grouping items, or by total lot.

NON-COLLUSION: By signing the proposal the offeror certifies that the proposal submitted, has been arrived at independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the solicitation, designed to limit independent bidding or competition.

TERMINATION: Unless otherwise stated in the solicitation, any master price agreement entered into as a result of this solicitation may be terminated by either party upon 60-days notice, in writing, prior to the effective date of the termination. Further, any Participating State may terminate its participation upon 30-days written notice, unless otherwise limited or stated in the special terms and conditions of the solicitation. Any termination under this provision shall not effect the rights and obligations attending orders outstanding at the time of cancellation, including any right of any Purchasing Entity to indemnification by the Contractor, rights of payment for goods/services delivered and accepted, and rights attending any warranty or default in performance in association with any order.

DEFAULT AND REMEDIES:

A. Any of the following shall constitute cause to declare the master price agreement or any order under this master price agreement in default:

- (1) Nonperformance of contractual requirements; or
- (2) A material breach of any term or condition of this master price agreement.

B. A written notice of default, and an opportunity to cure, shall be issued by the party claiming default, whether the Lead State (in the case of breach of the master price agreement), a Participating State (in the case of a breach of the Participating Addendum), the Purchasing Entity (with respect to any order), or the Contractor. Time allowed for cure shall not diminish or eliminate any liability for liquidated or other damages.

C. If the default remains after the opportunity for cure, the non-defaulting party may:

- (1) Exercise any remedy provided by law or equity;
- (2) Terminate the master price agreement or any portion thereof, including any orders issued against the master price agreement;
- (3) Impose liquidated damages, as specified in the solicitation or master price agreement;
- (4) In the case of default by the contractor, and to the extent permitted by the law of the Participating State or Purchasing Entity, suspend contractor from receiving future solicitations.

LAWS AND REGULATIONS: Any and all supplies, services and equipment offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

CONFLICT OF TERMS: In the event of any conflict between these standard terms and conditions and any special terms and conditions in the solicitation, the special terms and conditions shall govern.

**SUGGESTED STANDARD CONTRACT TERMS AND CONDITIONS
NATIONAL ASSOCIATION OF STATE PROCUREMENT OFFICIALS (NASPO)
AND
WESTERN STATES CONTRACTING ALLIANCE (WSCA)**

REPORTS: The contractor shall submit quarterly reports to the Lead State contract administrator, and upon request to any Participating State, showing the quantities and dollar volume of purchases by each Purchasing Entity.

HOLD HARMLESS: The contractor shall release, defend, indemnify and hold harmless NASPO, the Participating States, and the Purchasing Entities, as well as the officers, agents and employees of NASPO, the Participating States and the Purchasing Entities, from and against any damage, cost or liability, including reasonable attorneys fees for any or all injuries to persons, property or claims for money damages arising from acts or omissions of the contractor, its employees or subcontractors or volunteers.

ORDER NUMBERS: Master price agreement numbers and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

GOVERNING LAW AND VENUE: This procurement shall be governed and the resulting master price agreement construed in accordance with the laws of the Lead State. The construction and effect of any Participating Addendum or order against the master price agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity's State. Venue for any claim, dispute or action concerning the construction and effect of the master price agreement shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against the master price agreement or the effect of a Participating Addendum shall be in the Purchasing Entity's State.

DELIVERY: The prices offered shall be the delivered price to any NASPO state agency or purchasing entity. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the contractor. Responsibility and liability for loss or damage shall remain the Contractor until final inspection and acceptance when responsibility shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered shall be shipped without charge.

WARRANTY: The contractor acknowledges that the Uniform Commercial Code applies to this master price agreement. In general, the contractor warrants that: (a) the product will do what the salesperson said it would do, (b) the product will live up to all specific claims that the manufacturer makes in their advertisements, (c) the product will be suitable for the ordinary purposes for which such product is used, (d) the product will be suitable for any *special purposes* that the Purchasing Entity has relied on the contractor's skill or judgment to consider when it advised the Purchasing Entity about the product, (e) the product has been properly designed and manufactured, and (f) the product is free of significant defects or unusual problems about which the Purchasing Entity has not been warned.

The contractor agrees to warrant and assume responsibility for each hardware, firmware, and/or software product (hereafter called the product) that it licenses, or sells, to the Purchasing Entity under this master price agreement. When applicable, Contractor warrants that product(s) furnished pursuant to this contract shall, when used in accordance with the product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a contractor proposes or an acquisition requires that specific products must perform as a package or system, this warranty shall apply to the products as a system.

**SUGGESTED STANDARD CONTRACT TERMS AND CONDITIONS
NATIONAL ASSOCIATION OF STATE PROCUREMENT OFFICIALS (NASPO)
AND
WESTERN STATES CONTRACTING ALLIANCE (WSCA)**

Where contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g., billing, invoicing, claim processing), contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

This Date/Time Warranty shall survive beyond termination or expiration of this contract through: a) ninety (90) days or b) the contractor's or product manufacturer/developer's stated date/time warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this contract for breach of warranty.

AMENDMENTS: The terms of this master price agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the Master Price Agreement Administrator of the Lead State.

ASSIGNMENT/SUBCONTRACT: Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this master price agreement, in whole or in part, without the prior written approval of the Master Price Agreement Administrator of the Lead State.

NONDISCRIMINATION: The offeror agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. The offeror further agrees to furnish information and reports to Participating State(s), upon request, for the purpose of determining compliance with these statutes. Offeror agrees to comply with each individual state's certification requirements, if any, as stated in the special terms and conditions. This master price agreement may be canceled if the offeror fails to comply with the provisions of these laws and regulations. The offeror must include this provision in every subcontract relating to purchases by the States to insure that subcontractors and vendors are bound by this provision.

SEVERABILITY: If any provision of this master price agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the master price agreement did not contain the particular provision held to be invalid.

INSPECTIONS: Goods furnished under this master price agreement shall be subject to inspection and testing by the Purchasing Entity at times and places determined by the Purchasing Entity. If the Purchasing Entity finds goods furnished to be incomplete or not in compliance with proposal specifications, the Purchasing Entity may reject the goods and require Contractor to either correct them without charge or deliver them at a reduced price, which is equitable under the circumstances. If Contractor is unable or refuses to correct such goods within a time deemed reasonable by the Purchasing

**SUGGESTED STANDARD CONTRACT TERMS AND CONDITIONS
NATIONAL ASSOCIATION OF STATE PROCUREMENT OFFICIALS (NASPO)
AND
WESTERN STATES CONTRACTING ALLIANCE (WSCA)**

Entity, the Purchasing Entity may cancel the order in whole or in part. Nothing in this paragraph shall adversely affect the Purchasing Entity's rights including the rights and remedies under the Uniform Commercial Code.

PAYMENT: Payment for completion of a master price agreement order is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. The Contractor may assess overdue account charges on the outstanding balance in accordance with, and up to the maximum allowed by, the laws of the participating state. Payments may be remitted by mail or electronic funds transfer. Payments may also be made via a Purchasing Entity's "Purchasing Card".

FORCE MAJEURE: Neither party to this master price agreement shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The Lead State may terminate this master price agreement after determining such delay or default will reasonably prevent successful performance of the master price agreement.

HAZARDOUS CHEMICAL INFORMATION: The Contractor will provide one set of the appropriate material safety data sheet(s) and container label(s) upon delivery of a hazardous material to the Purchasing Entity agency. All safety data sheets and labels will be in accordance with each participating state's requirements.

FIRM PRICE: Unless otherwise stated in the special terms and conditions, for the purpose of award, offers made in accordance with this solicitation must be good and firm for a period of ninety (90) days from the date of receipt of bids or proposals. Prices must remain firm for the full term of the master price agreement.

EXTENSION OF PRICES: In the case of error in the extension of prices in the proposal, the unit prices will govern.

PROPOSAL PREPARATION COSTS: NASPO and the lead state are not liable for any costs incurred by the offeror in preparation of the bid or proposal.

CERTIFICATION REGARDING CONFLICT OF INTEREST: Contractor certifies that it has not offered or given any gift or compensation prohibited by the state laws of any Participating State to any officer or employee of NASPO or Participating States to secure favorable treatment with respect to being awarded this contract.

INDEPENDENT CONTRACTOR: Contractor shall be an independent contractor, and as such shall have no authorization, express or implied to bind the Participating States to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for NASPO or the states, except as expressly set forth herein.

POLITICAL SUBDIVISION PARTICIPATION: Participation under this master price agreement by political subdivisions (i.e., statutorily eligible colleges, school districts, counties, cities, etc.) of a NASPO state, with the prior approval of the state chief procurement official, shall be voluntarily determined by the political subdivision.

**SUGGESTED STANDARD CONTRACT TERMS AND CONDITIONS
NATIONAL ASSOCIATION OF STATE PROCUREMENT OFFICIALS (NASPO)
AND
WESTERN STATES CONTRACTING ALLIANCE (WSCA)**

The contractor agrees to supply the political subdivisions based upon the same terms, conditions and prices.

CERTIFICATION REGARDING DEBARMENT: The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by NASPO.

RECORDS ADMINISTRATION: The Contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this master price agreement. These records will be retained by the Contractor for at least four years after the master price agreement terminates, or until all audits initiated within the four years have been completed, whichever is later.

AUDIT OF RECORDS: The Contractor agrees to allow NASPO, State and Federal auditors, and state agency staff access to all the records related to this master price agreement, and the right to copy those records, for audit, inspection and monitoring of services. Such access will be during normal business hours, or by appointment.

PRICES AS CEILING:

Master Price Agreement prices represent ceiling prices for the supplies and services priced in the master price agreement.

The vendor shall report to the Lead State any price reduction or discount, or other more favorable terms, offered to any Purchasing Entity.

In instances NOT related to the established standards, committed volumes or volume bulk purchases of a participating state or states, the awarded vendor agrees to negotiate in good faith to reestablish ceiling prices or other more favorable terms and conditions applicable to future orders.

STATE PARTICIPATION/UNIQUE TERMS AND CONDITIONS:

Apart from the Lead State conducting the solicitation, the States indicated on Attachment A have signified their initial intent to participate in a Master Price Agreement resulting from this Solicitation. Attachment A of the Solicitation includes any significant modifications to these terms and conditions or State-specific provisions required by the laws, regulations, or procurement practices of the State(s). Final participation in the Master Price Agreement by the State(s) shall be signified through the execution of a Participating Addendum.

After the solicitation has closed and an award has been made, additional NASPO members may be added with the consent of the contractor through execution of a Participating Addendum.

RENTAL AND LEASES:

Rental:

Individual Participating States and Participating Entities may enter in to rental agreements for the products covered in the contracts resulting from the RFP, if they have the legal authority to enter into these types of agreements without going through a competitive process. Responders who wish to participate in rental agreements with these individual states/entities must submit copies of all of their

**SUGGESTED STANDARD CONTRACT TERMS AND CONDITIONS
NATIONAL ASSOCIATION OF STATE PROCUREMENT OFFICIALS (NASPO)
AND
WESTERN STATES CONTRACTING ALLIANCE (WSCA)**

rental agreements with their responses to this RFP. The rental agreements will not be reviewed or evaluated as part of the RFP evaluation process defined in this RFP. The agreements will simply be made available to any state or entity who wishes to negotiate a rental agreement with a Contractor.

Leases:

Individual Participating States and Participating Entities may enter in to lease agreements for the products covered in the contracts resulting from the RFP, if they have the legal authority to enter into these types of agreements without going through a competitive process. Responders who wish to participate in lease agreements with these individual states/entities must submit copies of all of their lease agreements with their response to this RFP. The lease agreements will not be reviewed or evaluated as part of the RFP evaluation process defined in this RFP. The agreements will simply be made available to any state or entity who wishes to negotiate a lease agreement with a Contractor.

COMPREHENSIVE FINANCIAL OPTIONS THAT SHOULD BE INCLUDED:

- Purchase
- Operational Leases - with varying buyout ownership options at end of term including no ownership option
- Capital Leases – Traditional financing with ownership at end of term (software, buyouts of existing leases)
- Cancelable Rentals – Cancel with four month penalty on rental payment
 - All leases and rentals must have a non appropriations clause

NON-APPROPRIATION:

The terms of the Agreement and any purchase order issued for multiple years under this Agreement is contingent upon sufficient appropriations being made by the Legislature or other appropriate governing entity. Notwithstanding any language to the contrary in this Agreement or in any purchase order or other document, a Purchasing Entity may terminate its obligations under this Agreement, if sufficient appropriations are not made by the governing entity at a level sufficient to allow for payment of the goods or services due for multiple year agreements, or if operations of the paying entity are being discontinued. The Purchasing Entity's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final and binding.

A Purchasing Entity shall provide sixty (60) days notice, if possible, of its intent to terminate for reason cited above. Such termination shall relieve the Purchasing Entity, its officers and employees from any responsibility or liability for the payment of any further amounts under the relevant Purchase Order.

WSCA/NASPO eMARKET CENTER:

Awarded responders are required to participate in the WSCA/NASPO eMarket Center and, working through WSCA's contractor (SciQuest), connect with the eMarket Center. Participation does not require an awarded responder to have any special level of technology or technological understanding.